

1 Rule 3-111.03. Standards of judicial performance.

2 Intent:

3 To specify the standards against which judicial performance will be measured and the
4 methods for fairly, accurately and reliably measuring judicial performance.

5 Applicability:

6 This rule shall apply to the Judicial Council and, except as otherwise provided, to the judges
7 and commissioners of the courts of record and not of record.

8 Subsection (2)(A) shall apply to the judges and commissioners of the courts of record.

9 Subsection (2)(B) shall apply to the judges of the district court who conduct jury trials.

10 For judges standing for retention election in 2004 and beyond and for commissioners subject
11 to reappointment in 2003 and beyond, Subsection (2)(C) shall apply from the effective date of
12 the rule until the evaluation by the Council or for the judge's or commissioner's term of office,
13 whichever is shorter. Judges standing for retention election in 2002 and commissioners subject to
14 reappointment in 2002 shall meet the case under advisement standard as it existed prior to the
15 effective date of this rule. (Former Rule 3-111(3)(C).)

16 Statement of the Rule:

17 (1)(A) A judge standing for retention election or reappointment, or commissioner standing
18 for reappointment, shall be evaluated for compliance with the standards set forth in this rule.

19 (1)(B) No evaluation shall be based upon a criterion or standard in effect for less than two
20 years. However, the methodology for measurement may change periodically. Evaluation shall be
21 based upon performance during the current term of office.

22 (2) Standards of performance.

23 (2)(A) Survey of attorneys.

24 (2)(A)(i) The Council shall measure satisfactory performance by a sample survey of the
25 attorneys appearing before the judge or commissioner during the preceding two years or such
26 shorter period for which the judge or commissioner is being evaluated. The Council shall
27 measure satisfactory performance based on the results of the final survey conducted during a
28 judge's or commissioner's term of office, subject to the discretion of a judge serving an
29 abbreviated initial term not to participate in a second survey under Section (2)(A)(viii) of this
30 rule.

31 (2)(A)(ii) Survey scoring. The survey shall be scored as follows.

(2)(A)(ii)(a) Each question of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(2)(A)(ii)(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the “No Personal Knowledge” responses. A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(2)(A)(ii)(c) A judge’s or commissioner’s performance is satisfactory if:

(2)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

(2)(A)(ii)(c)(2) the favorable responses when divided by the total number of all responses, excluding “No Personal Knowledge” responses, is 70% or greater.

(2)(A)(iii) Surveyor. As used in this Code, the term “Surveyor” means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding the performance of judges.

(2)(A)(iv) Survey respondents. The clerk for the judge or commissioner or the Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the judge or commissioner at a hearing or trial during the preceding two year period or such shorter period for which the judge or commissioner is being evaluated. The judge or commissioner shall not review the list of potential respondents.

(2)(A)(v) Exclusion from survey respondents.

(2)(A)(v)(a) A lawyer who has been appointed as a judge or commissioner shall not be a respondent in the survey.

(2)(A)(v)(b) By certifying that one or more of the following conditions applies, the judge or commissioner may exclude an attorney from the list of respondents: The judge or commissioner

(2)(A)(v)(b)(1) has referred the lawyer to the Utah State Bar for discipline,

(2)(A)(v)(b)(2) has found the lawyer in contempt of court,

(2)(A)(v)(b)(3) has sanctioned the lawyer pursuant to rules of procedure,

(2)(A)(v)(b)(4) has held the lawyer’s law firm jointly responsible under Utah Rule of Civil Procedure 11(c)(1)(A),

(2)(A)(v)(b)(5) has presided in a civil or criminal proceeding to which the lawyer is a party,

or

(2)(A)(v)(b)(6) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney in which the attorney alleges animus of the judge or commissioner toward the attorney.

(2)(A)(v)(c) Other exclusions.

(2)(A)(v)(c)(1) A judge may request that the Judicial Council exclude from the survey an attorney who does not qualify for exclusion under (b) if the judge believes the attorney will not respond objectively to the survey. The request must be submitted within 14 days after receiving the form for excluding lawyers under (b).

(2)(A)(v)(c)(2) In the request, the judge shall explain why the attorney will not respond objectively to the survey. The judge shall explain why the attorney's behavior has not subjected the attorney to sanction under the rules of procedure, contempt or referral to the Bar.

(2)(A)(v)(c)(3) If the Management Committee determines that the attorney will not respond objectively to the survey, the Management Committee shall inform the Judicial Council for ratification. If the Judicial Council ratifies the determination, the Administrative Office of the Courts shall notify the Surveyor and the Surveyor shall exclude the attorney from the judge's respondent pool. The determination applies only to the pending attorney survey.

(2)(A)(vi) Number of survey respondents. For each judge or commissioner who is the subject of a survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or commissioner whichever is less.

(2)(A)(vii) Factors in selecting respondents; response rate. In selecting respondents from potential respondents, the Surveyor should favor attorneys with a greater number of appearances and attorneys with more recent appearances, and the Surveyor should limit to 12 the number of survey questionnaires to which an attorney is asked to respond. The Surveyor may balance these factors in assigning respondents to particular judges or commissioners. The Surveyor should pursue a response rate of 70% or more for each judge or commissioner. The goals of this paragraph are advisory and failure to meet the goals shall not invalidate the survey.

(2)(A)(viii) Administration of the survey. Judges with a six-year term of office shall be the subject of a survey in the fifth year of the term. Justices of the Supreme Court shall be the subject of a survey in the ninth year of the term. Newly appointed judges shall be the subject of a survey during their second year in office and, at their option, prior to their initial retention election.

Court Commissioners shall be the subject of a survey approximately one year prior to the expiration of their term of appointment.

(2)(B) Survey of jurors. The Council shall measure satisfactory performance by a survey of the jurors appearing before the judge during the preceding two years or such shorter period for which the judge is being evaluated.

(2)(B)(i) Survey responses. Each question will have four possible responses: Yes, No, No Opinion, and No Opportunity to Observe. A note card on which the juror can provide anonymous comments to the judge shall be attached to the survey questionnaire.

(2)(B)(ii) Survey scoring. The survey shall be scored as follows:

(2)(B)(ii)(a) A favorable response is Yes.

(2)(B)(ii)(b) Each question shall be scored by dividing the total number of Yes responses by the total number of Yes plus No responses.

(2)(B)(ii)(c) A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(2)(B)(ii)(d) A judge's performance is satisfactory if:

(2)(B)(ii)(d)(1) At least 75% of the questions on the survey have a satisfactory score; and

(2)(B)(ii)(d)(2) The Yes responses to all questions when divided by the total number of Yes plus No responses to all questions is 70% or greater.

(2)(B)(iii) Administration of the survey. All jurors rendering a verdict in a case and all jurors, including alternate jurors, with at least three hours of trial time with the judge shall have the opportunity to respond to the survey questionnaire.

(2)(B)(iii)(a) For jurors rendering a verdict. While the jurors are waiting for court to convene after declaring that they have reached a verdict, or as soon as possible after the jury has been discharged, the bailiff or clerk in charge of the jury shall provide the jurors with the evaluation questionnaires and comment note cards and two envelopes. One envelope will be preprinted with the mailing address of the Surveyor; the other will be preprinted with the name of the judge. The forms will instruct the jurors to place the comment note cards in the envelope with the judge's name, to place the survey questionnaires, completed and uncompleted, in the envelope with the Surveyor's name, and to seal the envelopes. The bailiff or clerk shall deliver the sealed envelopes to the respective addressees.

(2)(B)(iii)(b) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in charge of the jury shall administer the questionnaire to the discharged juror in the same manner as in paragraph (a) above.

(2)(C) Case under advisement standard. A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge or commissioner for final determination. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by reviewing the records of the court.

(2)(C)(i) A justice of the Supreme Court demonstrates satisfactory performance by circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.

(2)(C)(ii) A judge of the Court of Appeals demonstrates satisfactory performance by:

(2)(C)(ii)(a) circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(2)(C)(iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

(2)(C)(iii)(a) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(iii)(b) no case under advisement more than six months after submission.

(2)(D) Compliance with education standards. Satisfactory performance is established if the judge ~~meets the minimum education requirements established by this Code~~ annually obtains 30 hours of judicial education subject to the availability of in-state education programs. The Council shall measure satisfactory performance by the self declaration of the judge or commissioner or by reviewing the records of the state court administrator.

(2)(E) Substantial compliance with Code of Judicial Conduct. Satisfactory performance is established if the response of the judge or commissioner demonstrates substantial compliance

with the Code of Judicial Conduct, if the Council finds the responsive information to be complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the judge is in substantial compliance with the Code of Judicial Conduct.

(2)(F) Physical and mental competence. Satisfactory performance is established if the response of the judge or commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.